Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

SHONG-CHING TONG,
Petitioner

v.

GENERAL DYNAMICS, FIRST INTERSTATE SERVICES COMPANY, ISUZU MOTORS AMERICA, INC.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA WORKERS' COMPENSATION APPEALS BOARD

PETITION FOR WRIT OF CERTIORARI

Shong-Ching Tong
1741 Phillips Dr.
Pomona, CA 91766
(909) 622-6884

Petitioner Pro Se

28 pp

QUESTIONS PRESENTED

1. May the California Workers' Compensation Appeals Board ignore the California Labor Code Section 5703.5's provision not to appoint or select Independent Medical Examiner when physicians' opinions are conflict with each other?

2. May the California Workers' Compensation Appeals Board distort, misrepresent, and misstate facts in its opinion and decision?

3. May the California Workers' Compensation Appeals Board refuse to let petitioner obtain a copy of the Court Reporter's Trial Transcript?

4. May the California Workers' Compensation Appeals Board adjudicate that the petitioner was not injured on the job while awarding 80th percentile medical-legal costs?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Shong-Ching Tong prays that a Writ of Certiorari issue to review the Joint Findings and Order of the California Workers' Compensation Appeals Board (WCAB) issued on September 8, 1993. Said Order was affirmed by the California Court of Appeal, Second Appellate District, Division 7 on May 3, 1994 and by the California Supreme Court on June 22, 1994.

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are the parties shown in the caption of this case, Shong-Ching Tong, General Dynamics, First Interstate Services Company, and Isuzu Motors America, Inc..

OPINIONS BELOW

The California Court of Appeal, Second Appellate District, Division 7, effectively affirmed the Joint Findings and Order of

the California Workers' Compensation Appeals Board by denying petitioner's "Petition for Writ of Review" in its order (Appendix A) on May 3, 1994.

The California Supreme Court denied a Petition for Review (Appendix B).

The California Workers' Compensation Appeals Board in its Joint Findings and Order awarded 80th percentile legal-medical costs to petitioner while adjudicating that petitioner was not injured on the job (Appendix C).

JURISDICTION

The California Supreme Court denied the Petition for Review on June 22, 1994. The petitioner invokes this certiorari jurisdiction under 28 U. S. C. Section 1257(3). Petitioner argued below that the California Workers' Compensation Appeals Board's Joint Findings and Order and Opinion and Decision would

violate his rights under both the California and the United States Constitutions.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. CONSTITUTION, Amend. XIV, Sec. 1:

Amendment XIV, Section 1 to the United States Constitution is set forth in Appendix G.

CALIFORNIA LABOR CODE SECTIONS 4061, 4062, 5313, and 5703.5:

California Labor Code Sections 4061, 4062, 5313, and 5703.5 are set forth in Appendix G.

STATEMENT OF THE CASE

Petitioner Shong-Ching Tong ("TONG") filed Workers' Compensation claims in the underlying matter in the California Workers' Compensation Appeals Board in 1987, 1988, and 1990 while TONG was employed by Respondents General Dynamics, First Interstate Services Company, and Isuzu Motors America, Inc..

The claims were consolidated for trial on October 27, 1992 and June 14, 1993. On June 14, 1993, the Respondents were represented by Counsel and TONG appeared in Pro Per.

On June 14, 1994, the Workers' Compensation Judge, Brian P. McGovern, took the matters under submission after the Judge:

1. refused to let TONG's witness, Harry Hicks, testify for TONG (Appendix D); and

2. continued the trial while TONG was waiting at the WCAB's Lobby for his Counsel to arrive at the Hearing Room and became ill after the Judge ordered a hearing re imposing contempt of court charges and monetary sanctions of $1,000 against TONG.

On September 8, 1993, the WCAB's Joint Findings and Order was issued. In WCAB's findings, the Judge had picked and chosen the evidence and had not truly stated the facts.

Because the Joint Findings and Order

issued by WCAB are: (1) contradictory to each other, (2) in violation of California Labor Code Sections 5703.5 picking and chosing the evidence and witness, and (3) in violation of California Labor Code Section 5313 after WCAB failed to make and file its Findings within 30 days as mandated, TONG now seeks relief by the United States Supreme Court.

GROUND FOR INVOKING THE JURISDICTION OF THIS COURT

(i) Dated of Entry of the Joint Findings and Order and Opinion and Decision sought to be reviewed:

September 8, 1993.

(ii) Date of any order respecting a rehearing, and the date and terms of any order granting an extension of time within which to file the petition for a Writ of Certiorari:

None.

(iii) Express reliance upon Rule 12.3 when a Cross-Petition for a Writ of Certiorari is filed under that Rule and the date of receipt of the petittion for a writ of certiorari in connection with which the cross-petition is filed:

Not applicable.

(iv) The statutory provision believed to confer on this court jurisdiction to review the judgment or decree in question by writ of certiorari:

Title 28 United States Code, Section 1257.

THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

Constitution of the United States, Amendment XIV, Section 1.

California Labor Code Sections 4061, 4062, 5313, and 5703.5.

REVIEW OF JUDGMENT OF A STATE COURT

Please see above and Appendix C.

REVIEW OF A JUDGMENT OF A UNITED STATES COURT OF APPEALS

Not applicable.

REASONS FOR ISSUING THE WRIT:

1. The California Workers' Compensation Appeals Board had ignored the Provisions of California Labor Code Section 5703.5 to appoint or select an Independent Medical Examiner

("IME") to evaluate TONG's claims when medical opinions are in conflict among TONG's and Respondents' physicians. In the instant case, the WCAB adapted reports written by Respondents' physicians and ignored reports written by TONG's physicians. The Judge's action was in violation of the holdings in Garza v. Workers' Comp. App. Bd. (1970) 3 Cal.3d 312 and in Phillips v. WCAB, M & H Construction Co. (1992).

2. The WCAB had violated provisions of California Labor Code Section 5313 when it failed to make and file findings upon all facts involving the controversy and award within 30 days as mandated.

3. The WCAB had repeatedly refused to allow TONG's witness to testify during the trial on June 14, 1993.

4. The WCAB had repeatedly refused to allow TONG to obtain a copy of the Reporter's

Transcript, which would show the Judge's bias and prejudices toward petitioner during t he trial on June 14, 1993.

5. The Appellate court had ignored evidence and facts showing the Judge had mis-stated, distorted, and misrepresented facts in his Opinion and Decision.

In the instant case, the WCAB had ignored provisions of California Labor Code Sections 4061, 4062,and 5703.5 when it failed to appoint or select Independent Medical Examiner to resolve the conflicts in the medical reports submitted by TONG's and Respondents' physicians.

Moreover, the WCAB should not pick and choose evidence and facts in order to support its findings.

CONCLUSION

For the reasons set forth above, Petitioner Shong-Ching Tong prays that the Court will issue its Petition for Certiorari

to the California Workers' Compensation Appeals Board to review its September 8, 1994's Joint Fondings and Order that TONG was not injured on the jobs.

September 16, 1994

Respectfully submitted,

Shong-Ching Tong

Shong-Ching Tong
Petitioner Pro Se

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 7 DATE: 05/03/94

Shong-Ching Tong
1741 Phillips Drive
Pomona, CA 91766

RE: Tong, Shong-Ching
VS.
Workers' Compensation Appeals Board
2 Civil B081139
Los Angeles No. POM0124143

THE COURT:

The petition for writ of Review (w. c. a. b.) is denied.

Second Appellate District, Division Seven
No. B081139
S039875

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

IN BANK

SHONG-CHING TONG, Petitioner

v.

WORKERS' COMPENSATION APPEALS BOARD,
Respondent

GENERAL DYNAMICS Et Al., Real Parties In
Interest

Petition for review DENIED.

SUPREME COURT
FILED
June 22, 1994

Robert Wandruff
Clerk

DEPUTY

LUCAS

Chief Justice

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. POM 0124143, 0124144
POM 0138790, 0139690
POM 0179193

SHONG CHING TONG,	)	
	)	
Applicant	)	JOINT
	)	
vs.	)	FINDINGS AND ORDER
ISUZU MOTORS OF AMERICA;	)	
WAUSAU INSURANCE,	)	
FIRST INTERSTATE;	)	
GENERAL DYNAMICS;	)	
INSURANCE COMPANY OF	)	
NORTH AMERICA,	)	
Defendants.	)	
	)	

Shong Ching Tong in Propria Persona.

Zonni, Ginocchio & Taylor by Jack James, Attorney for defendants Wausau Insurance.

Parker & Irwine by John F. Parker, Attorney for defendant Insurance Co. of North America.

Ibold & Anderson by Michael I. Douglas, Attorney for defendant Truck Insurance.

* * * * *

Application having been filed herein:all parties having appeared and the above the matter having been regularly submitted, the

Honorable BRIAN P. McGOVERN, WORKERS' COMPENSATION JUDGE, now finds, and orders as follows:

FINDINGS OF FACT

1. SHONG CHING TONG, born August 28, 1935, was employed at various locations, as a Program Analyst by various employers.

2. Applicant did not sustain injury arising out of and occurring in the course of said employment to his various body parts as alleged herein.

3. Applicant is entitled to reimbursement of medical-legal costs at the 80th percentile. Parties are to adjust same with jurisdiction reserved in the event that they are not able to do so.

4. There are no funds from which to issue attorneys fees, this issue is moot.

5. All other issues are moot.

A W A R D

AWARD IS MADE in favor of SHONG CHING

TONG against WAUSAU INSURANCE. TRUCK INSURANCE and INSURANCE COMPANY OF NORTH AMERICA of:

(a) Reimbursement for medical-legal costs as provided in Finding No. 3 above. less credit for sums paid. if any..

O R D E R

IT IS. THEREFORE. ORDERED that applicant take nothing further herein.

DATED AT POMONA. CALIFORNIA

September 8. 1993

/S/

BRIAN P. McGOVERN
WORKERS' COMPENSATION
JUDGE

Served by mail on parties on the Official Address Record effected on above date.

BY: R VALDEZ

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF INDUSTRIAL ACCIDENTS

WORKERS' COMPENSATION APPEALS BOARD

SHONG-CHING TONG Applicant vs. GENERAL DYNAMICS, et al.. Defendants.	Case No. 88 POM 138790 and all related cases DECLARATION OF HARRY HICKS

DECLARATION OF HARRY HICKS

I. HARRY HICKS, declare:

1. I am over the age of eighteen and not a party to nor do I have proprietary interest in the above-entitled action. My business address is 6521 Quite Hours, Suite 102, Columbia, MD..

2. On June 14, 1993, at about 10:00 a. m.. I was called to be the applicant's witness at his WCAB hearing.

3. After I was sworn in by the Honorable Brian McGovern, Judge of Workers' Compensation Appeals Board (WCAB), Mr. Tong asked me questions concerning his wrongful termination case against GTE Data Services. Isusu Motors objected to many of Mr. Tong's questions and Judge McGovern often ruled in Isuzu's favor, striking his questions, despite the fact Isuzu Motors America, Inc. first raised the issue of the GTE Data Services case.

4. Soon thereafter, Judge McGovern threatened Mr. Tong with monetary sanctions and jail terms, and said a hearing for contempt of court would be held at 1:30 p. m.. The trial recessed.

5. Immediately after the recess, Mr. Tong called his attorney in preparation of the contempt hearing.

6. While Mr. Tong's attorneys were on their way to the Workers' Compensation Appeals

Board. Judge McGovern reconvened the trial in spite of Mr. Tong's objections. Mr. Tong sought to recuse Judge McGovern. Judge McGovern denied Mr. Tong's requests and Mr. Tong and I left the hearing room because Mr. Tong had become ill.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that if called upon I could and would testify competently thereto.

Dated: June 14. 1993

/S/

Harry Hicks

Shong-Ching Tong
1741 Phillips Dr.
Pomona, CA 91766

December 16, 1993

WORKERS' COMPENSATION APPEALS BOARD
971 Corporate Center Dr.
Pomona, CA 91768

RE: SHONG-CHING TONG v. GENERAL DYNAMICS.
Et Al.,
87 POM 124143: 87 POM 121144: 88 POM
138790: 88 POM 139690: POM 179193

ATTN: Renee Fasano

Dear Ms. Fasano:

I would very much appreciate your kindness if you would give me a copy of that portion of the Trial Transcript for the trial transcript for the trial held on June 14, 1993 before Judge Brian McGovern.

The Portion of the Transcript I need is from begining of the trial on June 14, 1993 to the time Judge McGovern continued the trial without me in the Courtroom.

I am goning to retain an attorney to represent me in my Workers' Compensation cases. The Trial Transcript for the trial held on June 14, 1993 will help the attorney to better understand of the proceedings in instant case.

Please bill me for the costs and expenses incurred as a result of my request.

Thank you for your immediate attention on my request. I am looking forward to hearing from you soon.

Very Truly Yours,

/S/
Shong-Ching Tong

Law Offices of
ROBERT M. SCHUCKER
222 North Mountain Avenue, Suite 201
Upland, California 91786

December 29, 1993

Hon. Robert Welch
Presiding Judge
Workers' Compensation Appeals Board
971 Corporate Center Drive
Pomona, CA 91768

Re: Shong-Ching Tong v. General Dynamics, et al.
87 POM 124143; 87 POM 121144; 88 POM 138790; 88 POM 139690; POM 179193

Dear Judge Welch:

This letter is written on behalf of Shong-Ching Tong, who appeared in Pro Per before the Board at trial of the above consolidated matter, on June 14, 1993.

Mr. Tong would very much like to obtain a transcript of the June 14, 1993 proceeding. Further, since he has asked my assistance in future Workers' Compensation cases, I suspect that a reporter's transcript of the June 14th trial may be critical to my understanding of it.

I understand that you must authorize the release of a reporter's transcript. May I therefore request that you grant the reporter permission to provide a transcript to Mr. Tong?

Your assistance is greatly appreciated.

Very respectfully,
/S/
Robert M. Schucker

U. S. CONSTITUTION. Amend. XIV. Sec. 1:

"All persons born or naturalizaed in the United States. and subject to the jurisdiction thereof. are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life. liberty or property. without due process of law: nor deny any person within its jurisdiction the equal protection of laws."

California Labor Code. Section 4061:

"(m) . . . . However. the testimony. records. and reports offered by the treating physician or physicians who treated the employee for the injury and comprehensive medical evaluations prepared by a qualified medical evaluator selected by an unrepresented employee from a three-member panel shall be admissible."

California Labor Code. Section 4062:

"(d) No disputed medical issue specified in subdivision (a) may be the subject of a declaration readiness to proceed unless there has first been an evaluation by the treating physician or an agreed or qualified medical evaluator."

"(e) . . . . Reports obtained in violation of this prohibition shall not be admissible in any proceeding before the appeal board. However. the testimony. records. and

reports offered by the treating physician or physicians who treated the employee for the injury shall be admissible."

California Labor Code, Section 5313:

"The Appeals Board or workers' compensation judge shall within 30 days after the case is submitted make and file findings upon all facts involving the controversy and award, the order or decision stating the determination as to the rights of the parties. Together with the finding, decision or award there shall be served on all the parties to the proceeding a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made."

California Labor Code, Section 5703.5:

"(a) The appeals board, . . . may, upon the agreement of a party to pay the cost, direct an unrepresented employee to be examined by a qualified medical evaluator selected by the appeals board, . . ."